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United States General Accounting Office
Washington, DC 20548

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November 27, 2000

The Honorable Richard G. Lugar
Chairman

The Honorable Tom Harkin
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Larry Combest
Chairman

The Honorable Charles W. Stenholm
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: Department of Agriculture, Commodity Credit Corporation: Bioenergy Program

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture, Commodity Credit Corporation (CCC), entitled "Bioenergy Program" (RIN: 0560-AG16). We received the rule on November 8, 2000. It was published in the Federal Register as a final rule on November 13, 2000. 65 Fed. Reg. 67608.

The final rule is designed to accelerate the development and use of bio-based technologies in stimulating the industrial use of agricultural commodities into bio-based fuels and products. CCC will make incentive cash payments to bioenergy producers who increase their purchase of eligible agricultural commodities, as compared to the corresponding period in the prior fiscal year, and convert that commodity into increased bioenergy production.

The announced effective date of the rule is December 1, 2000, which is less than the required 60-day delay in the effective date of a major rule under section 801 of the Congressional Review Act portion of Small Business Regulatory Enforcement Fairness Act. CCC states in the preamble to the final rule that it has found that delaying the effective date of the rule would be contrary to the public interest and, therefore, invokes the exception contained in section 808.

Section 808(2) states that, notwithstanding section 801, “any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest” shall take effect at such time as the federal agency promulgating the rule determines.

While CCC states that the rule is exempt from the notice and comment procedures found at 5 U.S.C. 553 because it involves a benefit, CCC did issue a notice of proposed rulemaking and received comments, which it considered. As discussed in our report on a major rule issued by the Health Care Financing Administration concerning Medicare (GAO/OGC-97-9, December 9, 1996), the “good cause” exception to the 60-day delay provision is not available when notice and comment procedures have been used.

Enclosed is our assessment of the CCC’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, with the exception of the effective date issue, the CCC complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Larry Dyckman, Director, Natural Resources and Environment. Mr. Dyckman can be reached at (202) 512-3841.

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Parks Shackelford
Executive Vice President
Commodity Credit Corporation
Department of Agriculture

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION
ENTITLED
"BIOENERGY PROGRAM"
(RIN: 0560-AG16)

(i) Cost-benefit analysis

The Commodity Credit Corporation will make available up to \$150 million in fiscal year 2001 and \$150 million in fiscal year 2002 for this program. During fiscal years 2001 and 2002 incentive payments for the program are expected to range from about \$57 million under a low-impact scenario to about \$164.2 million under a high-impact scenario.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The CCC states that since it was not required under 5 U.S.C. 553 to publish a notice of proposed rulemaking, the Act is not applicable. CCC has informed our Office that the rule is exempt because of the exception for rules involving grants or benefits found in section 553(a)(2).

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule will not impose an intergovernmental or private sector mandate, as defined in title II, of over \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On July 27, 2000, the CCC published a Notice of Proposed Rulemaking in the Federal Register. 65 Fed. Reg. 46115. In response, CCC received 123 comments, which are responded to in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The information collection requirements of the final rule have been approved by the Office of Management and Budget.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in section 5(e) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c (e)).

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

CCC has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.